

FILED & ENTERED

SEP 20 2017

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY sumlin DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

MERCEDES RENDON-GRANJA,

Debtor(s).

Case No.: 2:16-bk-24744-NB

CHAPTER 13

**MEMORANDUM DECISION ON MOTION TO
AVOID JUNIOR LIEN**

Hearing (matter submitted):

Date: June 22, 2017

Time: 8:30 a.m.

Place: Courtroom 1545
255 E. Temple St.
Los Angeles, CA 90012

At the above-captioned time and place, a continued hearing was held on the debtor's motion to avoid the junior lien (the "Motion", dkt. 19) held by Trinity Financial Services LLC (the "Junior Lienholder") that is secured by the debtor's principal residence located at 3378 Elm Avenue, Unit 8, Long Beach, California (the "Property").¹ By agreement of the parties, the matter was taken under submission for a final ruling based on the written record including supplemental appraisers' declarations (dkt. 26, 30, 32, 37, 40, 41, 42).

(1) **Background.** A chapter 13 plan can "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property

¹ This matter was continued from March 2 to April 27, June 22, August 17 and September 14, 2017.

1 that is the debtor's principal residence." 11 U.S.C. § 1322(b)(2) (emphasis added). A
2 claim is not a "secured claim" for bankruptcy purposes, however, if the subject lien is
3 entirely underwater. *In re Zimmer*, 313 F.3d 1220 (9th Cir. 2002); *In re Lam*, 211 B.R.
4 36 (9th Cir. BAP 1997). Therefore the key issue is whether or not (a) the aggregate
5 dollar amount owed on senior liens exceeds (b) the value of the Property as of the
6 relevant date. The parties have not briefed what date is relevant. This decision will use
7 the date on which the bankruptcy petition was filed (the "Petition Date"), which in this
8 case was November 7, 2016, based on the reasoning set forth in a tentative decision in
9 another case. *In re Gutierrez*, 503 B.R. 548 (Bankr. C.D. Cal. 2013).

10 (2) **Senior Liens.** The senior lienholder's proof of claim (Claim no. 6-1)
11 asserts a debt of \$312,704.38 as of the Petition Date. The parties have not contested
12 this amount.

13 (3) **Competing Appraisals.** The debtor's appraiser values the Property at
14 \$300,000 as of September 19, 2016 (a month and a half before the Petition Date)
15 (dkt. 19, Ex. A). The Junior Lienholder's appraisal values the Property at \$315,000 as
16 of the Petition Date (dkt. 30). Both appraisals rely on sales or listings of properties that
17 they assert are comparable ("Comps"), and adjust the prices of those Comps to arrive at
18 a value for the Property.

19 (4) **Sale Date of Comps.** Sale dates close to the valuation date generally are
20 preferable (in a market that may be rising or falling). Both appraisers use Comps that
21 are fairly close to the Petition Date, although as noted in the rebuttal declaration of the
22 Junior Lienholder's appraiser (dkt. 42, ¶ 2) the market data cited by the debtor's
23 appraiser (dkt. 19-1, p. 29 of 32 & dkt. 40 at PDDF p. 35 of 36) suggests that values
24 may have been rising in the (short) time between the sales dates of the parties' Comps
25 and the Petition Date. Because the debtor's appraisal is dated a few weeks before the
26 Petition Date, this consideration weighs very slightly in favor of the Junior Lienholder.
27 On the other hand, as the debtor's appraiser points out (dkt. 40, ¶ 2) she provided the
28 graphs showing market data that she into consideration, whereas the Junior

1 Lienholder's appraiser did not, and this cuts very slightly in favor of the debtor's
2 appraisal. On balance, this consideration is neutral.

3 (5) **Sale Type of Comps.** Actual sales are superior to listings, and arms-
4 length non-distressed sales are preferable to the alternatives, such as "short" sales.
5 One of the debtor's Comps (#6, dkt. 19-1, p. 4 of 32) is a pending sale, so that Comp is
6 not entitled to as much weight, but the debtor's appraiser acknowledges this (dkt. 19-1,
7 p. 9 of 32) and it makes only a minor difference to the overall valuation. On balance this
8 factor is essentially neutral.

9 (6) **Proximity and Precise Location of Comps.** Usually the Comps that are
10 closest to the Property are the best indicators of value; and it is also important to
11 consider the characteristics of the precise location, such as whether the Property is
12 adjacent to undesirable properties or features, or within a particular school district. The
13 debtor's appraiser points out (dkt. 40, ¶ 3) that the Junior Lienholder's appraiser
14 checked a box for "no" adverse site conditions or external factors but the subject is
15 located next to a freeway, which she asserts is a considerable noise nuisance. But as
16 the Junior Lienholder's appraiser points out (dkt. 42, ¶ 3) all the Comps have the same
17 location influence. This factor is neutral.

18 (7) **Condition of the Comps relative to the Property.** This is the principal
19 area of the appraisers' disagreement. The condition of Comps can be difficult to
20 determine without a physical inspection, and the condition of any property is somewhat
21 subjective and difficult to quantify, but on the present record the following observations
22 apply to the relative conditions of the Comps and the Property. First, the debtor's
23 appraiser provided a fairly detailed listing of items of deferred maintenance at the
24 Property, supported by photographs, and of the Comps' condition, mostly supported by
25 her representation that she based that determination on MLS photos; and in contrast
26 the Junior Lienholder's appraiser did not provide any such details. This court
27 recognizes that, as the Junior Lienholder's appraisal suggests (dkt. 42, ¶ 11), an
28 excessive focus on "individual attributes" can give too much weight to those attributes

1 and an expert assessment of the “overall condition” is more persuasive, but that
2 assessment of overall condition should be based on numerous individual attributes and
3 it helps to have examples of those attributes to illustrate the appraiser’s diligence and
4 the nature of their analysis, so this factor weighs in favor of the debtor’s appraisal.
5 Second, the Junior Lienholder’s rebuttal declaration (dkt. 42, ¶¶ 6-11) points out various
6 reasons why it might not be appropriate to give as much weight to the Comps’ condition
7 as the debtor’s appraiser did, and those reasons are somewhat persuasive, which
8 weighs slightly against the debtor’s appraisal. Third, the debtor’s appraiser points out
9 minor errors or omissions in the Junior Lienholder’s appraisal (the number of units in the
10 development, an incorrect photograph, and not obtaining HOA information) (dkt. 40 at
11 PDF pp. 33 to 34, ¶¶ 4, 5 & 13) those things do not appear to have any relevance (dkt.
12 42 ¶¶ 4, 5 & 13), except to the very minor extent that they tend to show greater care by
13 the debtor’s appraiser. Fourth, the appraisers disagree about the weight to give to the
14 number of garage spaces and the necessity to use street parking for additional cars
15 (dkt. 50 at PDF, p. 34, ¶ 12; dkt. 41 ¶ 7; dkt. 42 ¶ 12 & ¶ G), but both appraisals’
16 photographs of the street appear to show ample parking, and although the Junior
17 Lienholder’s appraiser asserts that because he is more local he has a greater familiarity
18 with parking conditions he does not provide any contrary data or evidence, so on
19 balance the debtor’s appraisal is slightly more convincing on this issue. Fifth, the Junior
20 Lienholder’s appraiser makes a valid point (dkt. 41, ¶ 6) that all of the debtor’s Comps
21 are adjusted downwards, which is not as reliable as “bracketing” the subject Property
22 with Comps above and below the condition of the subject, so this factor weighs slightly
23 against the debtor’s appraisal.

24 (8) **Appraiser’s Experience/ Credibility.** This court is not persuaded that
25 this factor cuts in favor or against either appraisal.

26 (9) **Adjustments for Bed and Bath Counts and Interior Square Footage.**
27 The Comps are all very similar in this regard. This factor is neutral.

28 (10) **Valuation Decision.** Taking into consideration all of the record

presented, and in particular the matters noted above, this court finds that as of the
Petition Date the Property had a value of **\$305,000**.

(11) **Conclusion.** Based on the foregoing findings of fact and conclusions of
law, the Property is worth just barely less than the dollar amount of the senior lien as of
the Petition Date, and therefore the Motion must be GRANTED. Pursuant to LBR 9021-
1(b)(1)(B), the debtor is directed within 7 days to serve and lodge via LOU a proposed
order adopting that ruling "for the reasons stated" in this memorandum decision.

###

Date: September 20, 2017



Neil W. Bason
United States Bankruptcy Judge